

A. J. K. asks the Utah Labor Commission to review Administrative Law Judge Eblen's dismissal with prejudice of Mr. K.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

BACKGROUND AND ISSUE PRESENTED

Mr. K. filed an Application For Hearing with the Commission on June 26, 2001, seeking workers' compensation benefits from C. R. England for back injuries allegedly suffered while working as a truck driver for England. Judge Eblen scheduled an evidentiary hearing on Mr. K.'s claim for August 13, 2003.

Mr. K. now lives in New York. Prior to the evidentiary hearing, he requested permission to participate in the hearing by telephone because he was physically unable to travel to Salt Lake City. England objected to a telephone hearing on the grounds that Mr. K. should be physically present at the hearing so that Judge Eblen could "evaluate (Mr. K.'s) physical abilities before rendering an opinion. . . ." England also argued that it should have the right to confront Mr. K.'s claim by in-person cross examination.

On June 10, 2003, Judge Eblen denied Mr. K.'s request for a telephone hearing. The evidentiary hearing was held as scheduled on August 13, 2003, with England in attendance, but Mr. K. absent. Judge Eblen entered default against Mr. K. and accepted England's medical evidence and argument. On October 9, 2003, Judge Eblen issued her decision in favor of England and dismissing Mr. K.'s claim with prejudice.

On October 20, 2003, Mr. K. requested Commission review of Judge Eblen's decision. Among other statements, Mr. K. states that he does not have "the resources or finances to go to a physician on my own, or travel to Utah if I physically was able." Mr. K. also represents that he "will do whatever the court needs as long as travel is not one of the requirements."

DISCUSSION AND CONCLUSION OF LAW

Although Mr. K. has styled his submission in this matter as an "appeal" of Judge Eblen's decision, he does not challenge Judge Eblen's determination on the merits. Instead, Mr. K. asserts that it was impossible for him to appear in-person at the hearing held on August 13, 2003. In substance, then, Mr. K. is requesting relief from default and a new hearing. That request should be considered by Judge Eblen, subject to review by the Labor Commission or Appeals Board. The Commission therefore remands this matter to Judge Eblen for that purpose.

In remanding Mr. K.'s request, the Commission notes that Mr. K.'s distance from Utah

presents an unusual difficulty for the adjudicative process. However, his lack of counsel, unfamiliarity with workers' compensation procedures, possible financial difficulties, and possible physical disability and pain are not, unfortunately, uncommon. Despite these obstacles, it is the Commission's duty to provide all parties a fair hearing and just decision consistent with the Utah Workers's Compensation Act. On remand, Judge Eblen should take appropriate action to determine the nature and extent of Mr. K.'s physical and financial limitations. Judge Eblen should also carefully weigh the validity of England's argument that an in-person hearing is necessary, even though, by England's own admission, resolution of Mr. K.'s claim will likely depend on expert medical opinion. Under some circumstances, and with appropriate planning and control, telephone hearings may be necessary to provide a party an opportunity to be heard.

ORDER

The Commission remands this matter to Judge Eblen for consideration of Mr. K.'s request for relief from default and new hearing. It is so ordered.

Dated this 31st day of March, 2004.

R. Lee Ellertson, Commissioner